

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

**IN RE: KENNETH WAYNE GRAY, M.D.
 License No.: 0101-036314**

MODIFIED ORDER

In accordance with Sections 54.1-2400(10), 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), an informal conference was held with Kenneth Wayne Gray, M.D., on May 24, 2007, in Roanoke, Virginia.

Members of the Virginia Board of Medicine ("Board") serving on the Special Conference Committee ("Committee") were: Malcolm L. Cothran, Jr., Chairman; Valerie Lowe Hoffman, D.C.; and Clara L. Adams-Ender, R.N., M.S.N., BG USA Ret. Dr. Gray appeared personally and was represented by counsel, Walter H. Peake, III, Esquire. Virginia Scher, Adjudication Specialist, was present as a representative for the Administrative Proceedings Division of the Department of Health Professions.

The purpose of the informal conference was to inquire into allegations that Dr. Gray may have violated certain laws governing the practice of medicine in the Commonwealth of Virginia, as set forth in a Notice of Informal Conference dated April 9, 2007.

Following entry of the Board's Order on May 31, 2007, by letter dated June 8, 2007, counsel for Dr. Gray filed a *Motion to Reconsider* whereby he requested that the Committee reconsider the monetary penalty imposed on Dr. Gray. The motion was granted and this Modified Order has been entered *nunc pro tunc* to reflect this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now, having properly considered the evidence and statements presented, the Committee makes the following Findings of Fact and Conclusions of Law:

1. Kenneth Wayne Gray, M.D., was issued license number 0101-036314 to practice medicine in Virginia on January 26, 1984. Said license is currently active and will expire on October 31, 2008, unless renewed or otherwise acted upon.

2. Dr. Gray violated Section 54.1-2915.A(16) of the Code in his care and treatment of Patient A. Specifically, on or about December 10, 2002, Patient A, a 40-year-old female, was admitted for a scheduled surgery to repair a tear in the left medial meniscus. Without confirming the proper surgical site, Dr. Gray performed surgery on the right knee. Following that error, Patient A underwent another surgery that same day on her left knee.

3. Dr. Gray violated Sections 54.1-2915.A(3) and (16) of the Code in his care and treatment of Patient B. Specifically, on or about December 14, 2003, Patient B, an 86-year-old female, presented to the Emergency Department following a fall. Dr. Gray evaluated Patient B and diagnosed her with right intertrochanteric hip fracture, which he noted in his record, and admitted her to the facility pending surgical intervention. Radiographs taken on December 14, 2003 revealed a fracture to the left hip. On December 16, 2003, prior to scheduled surgery, revised consent forms were completed with Dr. Gray present indicating the surgical site would be the left hip. Despite Dr. Gray's awareness of the incorrect initial diagnosis and having obtained corrected

consent forms earlier that morning, he subsequently operated on the right hip. Following that error, Patient B underwent another surgery that same day on the left hip.

4. Dr. Gray stated to the Committee that following the incident with Patient A, he attempted to make changes in his surgical procedures to warn against wrong-site surgery. However, following the incident with Patient B, he implemented even more stringent protocol and a check and re-check system with both himself and staff.

5. Dr. Gray stated that since December 2003, he has had no further incidents of wrong-site surgery.

6. Dr. Gray completed approximately ten hours of risk management CME in 2004.

ORDER

WHEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that Kenneth Wayne Gray, M.D., be, and hereby is, issued a REPRIMAND.

It is further ORDERED that Dr. Gray be imposed a MONETARY PENALTY in the amount of five thousand dollars (\$5,000.00). Said monetary penalty shall be paid to the Board within ninety (90) days of entry of this Order.

Upon receipt of evidence that Dr. Gray has complied with the requirements of this Order, the Committee authorizes the Executive Director of the Board to close this matter without further proceedings.

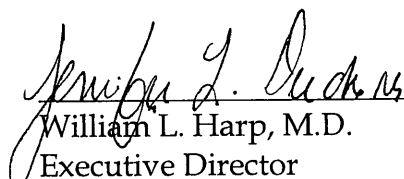
Violation of this Order shall constitute grounds for the revocation of the license of Dr. Gray. In the event Dr. Gray violates this Order, an administrative hearing shall be convened to determine whether his license shall be revoked.

Pursuant to Section 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public inspection and copying upon request.

Pursuant to Section 54.1-2400(10) of the Code, Dr. Gray may, not later than 5:00 p.m., on July 5, 2007, notify William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, Virginia 23230, in writing that he desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

Therefore, this Order shall become final on July 5, 2007; unless a request for a formal administrative hearing is received as described above.

FOR THE BOARD

for 

William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

ENTERED: 6/15/2007
Nunc Pro Tunc: May 31, 2007